

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2001-1227-010-075

vs.

Maureen McCafferty-Mattia, RN, Lic. No. E50261
Respondent

MEMORANDUM OF DECISION

Procedural Background

The Board of Examiners for Nursing (hereinafter "the Board") was presented by the Department of Public Health (hereinafter "the Department") with a Statement of Charges and Motion for Summary Suspension dated January 14, 2002. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Maureen McCafferty-Mattia (hereinafter "respondent") which would subject respondent's registered nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On February 6, 2002, the Board ordered, pursuant to its authority under §4-182(c) and §19a-17(c) of the General Statutes of Connecticut, that respondent's registered nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. The Board issued a Notice of Hearing scheduling a hearing for February 20, 2002. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. Board Exhibit 1 indicates that the Summary Suspension Order, Notice of Hearing and Statement of Charges were served on respondent by State Marshal on February 13, 2002.

The hearing took place on February 20, 2002, in the Town Counsel Chambers, Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

Respondent was present during the hearing but was not represented by counsel. Transcript, February 20, 2002, p. 3.

During the hearing, the Statement of Charges was orally amended by changing "January 17, 2001" to "July 16, 1997" in paragraph 7 and by changing "July 16, 1997" to "January 17, 2001" in paragraph 9. Transcript, February 20, 2002, p. 6.

During the hearing, respondent orally answered the Statement of Charges. Transcript, February 20, 2002, pp. 14-17.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Respondent was issued registered nurse license number E50261 on September 14, 1987. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1-E2.
2. The Board ordered a Consent Order in petition number 970423-010-027, which became effective August 1, 1997. By virtue of that Consent Order, respondent is deemed in this current proceeding to have admitted the allegations of that petition, namely that she abused alcohol, and diverted and abused Percocet, Demerol, Clonazepam and Xanax while employed as a registered nurse at Yale New Haven Hospital during 1996 and 1997. Dept. Exh. 1-B.
3. Pursuant to the Consent Order, respondent's license was placed on probation until August 1, 2001. The Consent Order required that she not use or obtain for personal use alcohol, controlled substances or legend drugs; that she submit to one observed random urine screen for drugs and alcohol per week for the first eighteen months of probation and one such screen and report every other week for the remainder of the probation; and, that she immediately refrain from practicing as a registered nurse for 45 days upon request by the Department if she violated a term of the Consent Order. Dept. Exh. 1-B.
4. Pursuant to a Memorandum of Decision (the "Decision") dated January 17, 2001, the probation of respondent's registered nurse license was extended to January 2003. The Order was based upon findings that respondent violated the terms of the Consent Order, dated July 16, 1997, in that respondent tested positive for alcohol and failed to cease working as a registered nurse when requested to do so by the Department. Dept. Exh. 1-C.
6. The terms of probation set forth in the Decision specifically provided that respondent shall not obtain for personal use any drug that has not been prescribed for her, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Dept. Exh. 1-C.

7. At all relevant times, respondent was employed as a nurse at the Mary Wade Home, New Haven, Connecticut. Transcript, February 20, 2002, p. 15.
8. In or about December 2001, respondent abused or utilized the controlled substance cocaine. A urine screen to which respondent submitted on December 13, 2001, tested positive for the presence of cocaine. Dept. Exhs. 1-D, 1-E; Transcript, February 20, 2002, p. 15.
9. Respondent's abuse of cocaine does, and/or may, affect her practice as a registered nurse. Transcript, February 20, 2002, p. 15.
10. Respondent continues to engage in individual and group therapy for chemical dependency. Rt. Exh. B. Transcript, February 20, 2002, p. 35

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

Maureen McCafferty-Mattia held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges provided sufficient legal notice as mandated by *Conn. Gen. Stat.* §4-177(a) and (b), and §4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as §19a-9-1 through §19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by *Conn. Gen. Stat.* §4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

The **FIRST COUNT** of the Statement of Charges alleges that in or about December 2001, respondent abused or utilized cocaine and that respondent's abuse of cocaine does, and/or may affect her practice as a nurse.

Respondent admits these charges. Transcript, February 20, 2002, pp. 15.

The General Statutes of Connecticut §20-99 provides in relevant part:

(a) The Board of Examiners for Nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing. After holding a

hearing . . . said board, if it finds such person to be guilty, may revoke or suspend his or her license or take any of the actions set forth in section 19a-17 . . . (b) Conduct which fails to conform to the accepted standards of the nursing profession includes, but is not limited to, the following . . . (2) illegal conduct, incompetence or negligence in performing usual nursing functions . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . .

Based on its findings and respondent's admissions, the Board concludes that respondent's conduct as alleged in the First Count of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-99(b)(2) and (5) and 19a-17.

The **SECOND COUNT** of the Statement of Charges, as amended, alleges that in December 2001, respondent submitted a urine screen that tested positive for cocaine.

Respondent admits this charge. Transcript, February 20, 2002, pp. 17.

Based on its findings, the Board concludes that respondent's conduct as alleged in the Second Count of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct violates the terms of probation as set forth in the Memorandum of Decision dated January 17, 2001. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* §19a-17.

The Board finds that respondent has had several relapses, but respondent has since developed an insight into her problems and her relapse triggers. The Board further finds that respondent has taken appropriate steps towards relapse prevention.

Order

Pursuant to its authority under *Conn. Gen. Stat.* §19a-17 and §20-99, the Board of Examiners for Nursing hereby orders the following:

1. That the Summary Suspension of respondent's registered nurse license, number E50261, ordered on February 6, 2002, is vacated on the effective date of this Memorandum of Decision.

2. That for the First Count and the Second Count of the Statement of Charges, respondent's registered nurse license, number E50261, is placed on probation for a period of four (4) years.
3. If any of the following conditions of probation are not met, respondent's registered nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. During the period of probation the Board shall pre-approve respondent's employment or change of employment within the nursing profession.
 - B. Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
 - C. Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first year of working as a nurse during the probationary period set forth in this Memorandum of Decision.
 - D. If employed as a nurse, respondent shall cause monthly employer reports to be submitted to the Board by her immediate supervisor during the entire probationary period.
 - E. The employer reports cited in Paragraph D above shall include documentation of respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph Q below.
 - F. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or her employer shall notify the Board, within seventy-two (72) hours, of such termination.
 - G. If respondent pursues further training in any subject area that is regulated by the Department, respondent shall provide a copy of this Memorandum of Decision to the educational institution or, if not an institution, to respondent's instructor. Such institution or instructor shall notify the Department in writing as to receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt. Said notification shall be submitted directly to the Department at the address cited in Paragraph Q below.

- H. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist, approved by the Board and the Department, during the entire period of probation.
- I. Respondent shall provide a copy of this Memorandum of Decision to her therapist. The Board shall be notified in writing by her therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.
- J. Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period.
- K. The therapist reports cited in Paragraph J above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph Q below.
- L. At her expense, respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process. Respondent shall be responsible for immediately notifying the laboratory, her therapist and/or personal physician and the Board of any drug(s) she is taking.
 - (1) There must be at least one (1) such random alcohol/drug screen weekly during the first and second years of probation, and at least two (2) such random alcohol/drug screens monthly during the third and fourth years of the probationary period.
 - (2) Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

(3) Random alcohol/drug screens must include testing for the following substances:

Amphetamines	Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

(4) Laboratory reports of random alcohol and drug screens shall be submitted directly to the Board and the Department, at the address cited in Paragraph Q below, by respondent's therapist, personal physician or the testing laboratory.

- M. Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.
- N. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.
- O. The Board must be informed in writing prior to any change of employment
- P. The Board must be informed in writing prior to any change of address.
- Q. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
Board of Examiners For Nursing
 410 Capitol Avenue, MS #12HSR
 P. O. Box 340308
 Hartford CT 06134-0308

- 4. Any deviation from the terms of probation, without prior written approval by the Board, shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. Any finding that respondent has violated this Order will

subject respondent to sanctions under §19a-17(a) and (c) of the General Statutes of Connecticut, including but not limited to, the revocation of her license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to respondent's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board).

5. This Memorandum of Decision becomes effective, and the four (4) year probation of respondent's registered nurse license shall commence, on the date signed by the Board.

The Board hereby informs respondent, Maureen McCafferty-Mattia, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 17th day of July 2002.

BOARD OF EXAMINERS FOR NURSING

By  _____